

AMENDED IN SENATE MAY 4, 2016
AMENDED IN SENATE APRIL 20, 2016
AMENDED IN SENATE APRIL 4, 2016

SENATE BILL

No. 1177

Introduced by Senator Galgiani

February 18, 2016

An act to add Article 14 (commencing with Section 2340) to Chapter 5 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1177, as amended, Galgiani. Physician and Surgeon Health and Wellness Program.

Existing law establishes in the Department of Consumer Affairs the Substance Abuse Coordination Committee, comprised of the executive officers of the department's healing arts boards and a designee of the State Department of Health Care Services. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board is required to use in dealing with substance-abusing licensees, whether or not a healing arts board has a formal diversion program.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California within the department. Existing law requires all moneys paid to and received by the Medical Board of California to be paid into the ~~state treasury~~ *State Treasury* and credited to the Contingent Fund of the Medical Board of California, which, except for fine and penalty money, is a continuously appropriated fund.

This bill would authorize the board to establish a Physician and Surgeon Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in his or her rehabilitation from, substance abuse, as specified. If the board establishes a program, the bill would require the board to contract for the program's administration with a private third-party independent administering entity meeting certain requirements. The bill would require program participants to enter into an individual agreement with the program that includes, among other things, a requirement to pay expenses related to treatment, monitoring, and laboratory tests, as provided.

This bill would create the Physician and Surgeon Health and Wellness Program Account within the Contingent Fund of the Medical Board of California. The bill would require the board to adopt regulations to determine the appropriate fee for a physician and surgeon to participate in the program, as specified. The bill would require these fees to be deposited in the Physician and Surgeon Health and Wellness Program Account and to be available, upon appropriation by the Legislature, for the support of the program. Subject to appropriation by the Legislature, the bill would authorize the board to use moneys from the Contingent Fund of the Medical Board of California to support the initial costs for the board to establish the program, except the bill would prohibit these moneys from being used to cover any costs for individual physician and surgeon participation in the program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 14 (commencing with Section 2340) is
2 added to Chapter 5 of Division 2 of the Business and Professions
3 Code, to read:
4
5 Article 14. Physician and Surgeon Health and Wellness Program
6
7 2340. (a) The board may establish a Physician and Surgeon
8 Health and Wellness Program for the early identification of, and
9 appropriate interventions to support a physician and surgeon in
10 his or her rehabilitation from, substance abuse to ensure that the
11 physician and surgeon remains able to practice medicine in a

1 manner that will not endanger the public health and safety and that
2 will maintain the integrity of the medical profession. The program,
3 if established, shall aid a physician and surgeon with substance
4 abuse issues impacting his or her ability to practice medicine.

5 (b) For the purposes of this article, “program” shall mean the
6 Physician and Surgeon Health and Wellness Program.

7 (c) If the board establishes a program, the program shall meet
8 the requirements of this article.

9 2340.2. (a) If the board establishes a program, the program
10 shall do all of the following:

11 (1) Provide for the education of all licensed physicians and
12 surgeons with respect to the recognition and prevention of physical,
13 emotional, and psychological problems.

14 (2) Offer assistance to a physician and surgeon in identifying
15 substance abuse problems.

16 (3) Evaluate the extent of substance abuse problems and refer
17 the physician and surgeon to the appropriate treatment by executing
18 a written agreement with a physician and surgeon participant.

19 (4) Provide for the confidential participation by a physician and
20 surgeon with substance abuse issues ~~who is not the subject of a~~
21 ~~current investigation.~~ *does not have a restriction on his or her*
22 *practice related to those substance abuse issues.*

23 (5) Comply with the Uniform Standards Regarding
24 Substance-Abusing Healing Arts Licensees as adopted by the
25 Substance Abuse Coordination Committee of the Department of
26 Consumer Affairs pursuant to Section 315.

27 2340.4. (a) If the board establishes a program, the board shall
28 contract for the program’s administration with a private third-party
29 independent administering entity pursuant to a request for
30 proposals. The process for procuring the services for the program
31 shall be administered by the board pursuant to Article 4
32 (commencing with Section 10335) of Chapter 2 of Part 2 of
33 Division 2 of the Public Contract Code. However, Section 10425
34 of the Public Contract Code shall not apply to this subdivision.

35 (b) The administering entity shall have expertise and experience
36 in the areas of substance or alcohol abuse in healing arts
37 professionals.

38 (c) The administering entity shall identify and use a statewide
39 treatment resource network that includes treatment and screening

1 programs and support groups and shall establish a process for
2 evaluating the effectiveness of such programs.

3 (d) The administering entity shall provide counseling and
4 support for the physician and surgeon and for the family of any
5 physician and surgeon referred for treatment.

6 (e) The administering entity shall make their services available
7 to all licensed California physicians and surgeons, including those
8 who self-refer to the program.

9 (f) The administering entity shall have a system for immediately
10 reporting a physician and surgeon who *withdraws or* is terminated
11 from the program to the board. This system shall ensure absolute
12 confidentiality in the communication to the board. The
13 administering entity shall not provide this information to any other
14 individual or entity unless authorized by the participating physician
15 and surgeon.

16 (g) The contract entered into pursuant to this section shall also
17 require the administering entity to do the following:

18 (1) Provide regular communication to the board, including
19 annual reports to the board with program statistics, including, but
20 not limited to, the number of participants currently in the program,
21 the number of participants referred by the board as a condition of
22 probation, the number of participants who have successfully
23 completed their agreement period, and the number of participants
24 terminated from the program. In making reports, the administering
25 entity shall not disclose any personally identifiable information
26 relating to any participant.

27 (2) Submit to periodic audits and inspections of all operations,
28 records, and management related to the program to ensure
29 compliance with the requirements of this article and its
30 implementing rules and regulations. Any audit conducted pursuant
31 to this section shall maintain the confidentiality of all records
32 reviewed and information obtained in the course of conducting
33 the audit and shall not disclose any information identifying a
34 program participant.

35 (h) In the event that the board determines the administering
36 entity is not in compliance with the requirements of the program
37 or contract entered into with the board, the board may terminate
38 the contract.

39 2340.6. (a) A physician and surgeon shall, as a condition of
40 participation in the program, enter into an individual agreement

1 with the program and agree to pay expenses related to treatment,
2 monitoring, laboratory tests, and other activities specified in the
3 participant's written agreement. The agreement shall include all
4 of the following:

5 (1) A jointly agreed upon plan and mandatory conditions and
6 procedures to monitor compliance with the program.

7 (2) Compliance with terms and conditions of treatment and
8 monitoring.

9 (3) Criteria for program completion.

10 (4) Criteria for termination of a physician and surgeon
11 participant from the program.

12 (5) Acknowledgment that withdrawal or termination of a
13 physician and surgeon participant from the program shall be
14 reported to the board.

15 (6) Acknowledgment that expenses related to treatment,
16 monitoring, laboratory tests, and other activities specified by the
17 program shall be paid by the physician and surgeon participant.

18 (b) Any agreement entered into pursuant to this section shall
19 not be considered a disciplinary action or order by the board and
20 shall not be disclosed *to the board* if both of the following apply:

21 (1) The physician and surgeon did not enroll in the program as
22 a condition of probation or as a result of an action by the board.

23 (2) The physician and surgeon is in compliance with the
24 conditions and procedures in the agreement.

25 (c) Any oral or written information reported to the board shall
26 remain confidential and shall not constitute a waiver of any existing
27 evidentiary privileges under any other provision or rule of law.
28 However, confidentiality regarding the physician and surgeon's
29 participation in the program and related records shall not apply if
30 the board has referred a participant as a condition of probation.

31 (d) Nothing in this section prohibits, requires, or otherwise
32 affects the discovery or admissibility of evidence in an action by
33 the board against a physician and surgeon based on acts or
34 omissions within the course and scope of his or her practice.

35 (e) Any information received, developed, or maintained
36 regarding a physician and surgeon in the program shall not be used
37 for any other purposes.

38 (f) Participation in the program shall not be a defense to any
39 disciplinary action that may be taken by the board. This section
40 does not preclude the board from commencing disciplinary action

1 against a physician and surgeon who is terminated unsuccessfully
2 from the program. However, that disciplinary action may not
3 include as evidence any confidential information unless authorized
4 by this section.

5 2340.8. (a) The Physician and Surgeon Health and Wellness
6 Program Account is hereby established within the Contingent Fund
7 of the Medical Board of California. Any fees collected by the board
8 pursuant to subdivision (b) shall be deposited in the Physician and
9 Surgeon Health and Wellness Program Account and shall be
10 available, upon appropriation by the Legislature, for the support
11 of the program.

12 (b) The board shall adopt regulations to determine the
13 appropriate fee that a physician and surgeon participating in the
14 program shall provide to the board. The fee amount adopted by
15 the board shall be set at a level sufficient to cover all costs for
16 participating in the program.

17 (c) Subject to appropriation by the Legislature, the board may
18 use moneys from the Contingent Fund of the Medical Board of
19 California to support the initial costs for the board to establish the
20 program under this article, except these moneys shall not be used
21 to cover any costs for individual physician and surgeon
22 participation in the program.

23 2340.10. The Administrative Procedure Act (Chapter 3.5
24 (commencing with Section 11340) of Part 1 of Division 3 of Title
25 2 of the Government Code) shall apply to regulations adopted
26 pursuant to this article.